

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:	§	
	§	
CHILDRESS GATEWAY	§	Case No. 17-41406-BTR-11
ENTERPRISE, INC. d/b/a	§	
ECONO LODGE,	§	In Proceedings Under Chapter 11
	§	
Debtor.	§	

**AGREED ORDER AUTHORIZING CONTINUED USE OF CASH COLLATERAL
PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE AND PROVIDING
ADEQUATE PROTECTION AND GRANTING LIENS AND SECURITY INTERESTS**

Upon the Motion for Use of Cash Collateral (the “Motion”) pursuant to Sections 105, 361, 363 and 364 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Federal Rule of Bankruptcy Procedure 4001, filed by Childress Gateway Enterprise, Inc. (“Debtor”), subject to the terms and conditions set forth herein, including the (i) grant of mortgages, security interests, liens and claims for the benefit of Wellington State Bank (the “Secured Lender”), Post-petition which are co-extensive with its Pre-petition liens (to the extent of such liens, if any) and (ii) grant of mortgages, security interests, liens and claims in order to provide adequate protection to the Secured Lender as more fully set forth herein, and upon the proceedings held before this Court and good and sufficient cause appearing therefore,

THE COURT HEREBY FINDS:

A. On June 30, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is now operating its business and managing its property as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no official committee has yet been appointed.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Debtor asserts venue of this Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Secured Lender has filed a Motion to Transfer Venue asserting venue is proper in the Northern District of Texas. This Order is entered subject to Wellington State Bank's Motion to Transfer Venue to the Northern District of Texas, Amarillo Division filed July 7, 2017 [Docket No. 12] (the "Motion to Transfer Venue").

C. The Debtor is in the business of owning and operating an Econo Lodge located in Childress, Texas (the "Property"). The Property is more particularly described as follows:

The West Ten Feet of Lot Two (W 10' of 2), all of Lots Three through Ten (3-10), the West Ten Feet of Lot Eleven (W 10' of 11), in Block One Hundred Seven (107), of the Fairview Addition to the City of Childress, Childress County, Texas, according to map or plat recorded in Volume 14, at Page 639, of the Deed Records of Childress County, Texas, together with the East Twenty Feet (E 20') of closed 19th Street, NW, lying adjacent to said Block 107, Fairview Addition.

D. The Secured Lender asserts Debtor is obligated to Secured Lender in the total amount of \$1,429,475.04, consisting of principal of \$1,349,763.31 and interest of \$79,711.73 (the "Secured Claim") pursuant to a promissory note (the "Note"). Secured Lender asserts that Secured Lender is the owner and holder of the Note.

E. The Secured Lender asserts the Secured Claim is collateralized by liens against all assets, real and personal, associated with the Property, including, without limitation, rents and profits.

F. As a result of Secured Lender's asserted liens on and security interest in the rents and profits related to the Property granted in Secured Lender's loan documents, Secured Lender asserts an interest in the rents of the Property and the fees, charges, accounts or other payments for

the use and occupancy of the Property within the scope of Section 552(b)(2) of the Bankruptcy Code (the “Cash Collateral”).

G. On July 24, 2017, this Court entered its Agreed Interim Order For Use of Cash Collateral Pursuant Section 363 of the Bankruptcy Code and Providing Adequate Protection and Granting Liens and Security Interests (the “Interim Order”) [Docket No. 20]. Pursuant to the Interim Order and subject to the occurrence of a Termination Event, the Debtor was authorized to use Cash Collateral through 5:00 p.m. Central Time on August 1, 2017, unless extended by further order of the Court.

H. The Debtor seeks, on a continuing basis, authorization to use Secured Lender’s Cash Collateral to pay the actual, ordinary and necessary operating expenses (the “Expenses”) set forth on the budget attached hereto as Exhibit “A” through September 30, 2017 (the “Budget”). The Budget has been reviewed by the Debtor and its management and sets forth, among other things, the projected cash receipts and projected cash disbursements of the Debtor for the period covered thereby.

I. The Debtor agrees to segregate and account to Secured Lender for all Cash Collateral: (i) that it now possesses, (ii) it has permitted to be transferred into the possession of others since the Petition Date, if any, (iii) is being held by any party in privity with or on behalf of the Debtor, and (iv) is existing on or is received after the Petition Date.

J. A need exists for the Debtor to obtain funds in order to continue the operation of its business. Without such funds, the Debtor will not be able to pay its direct operating expenses and obtain goods and services needed to carry on its business. The Debtor has no other source of funds to carry on its business operations other than the Cash Collateral of the Secured Lender.

K. The Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). This Court concludes that entry of this Order is in the Debtor's best interest and its estate and creditors as its implementation will, among other things, allow for the continued operation and rehabilitation of the Debtor's existing business.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Debtor shall deposit into an account styled "Debtor in Possession, Cash Collateral Account" ("hereinafter, the "Cash Collateral Account") all Cash Collateral, including all Cash Collateral presently in the possession of or under the control of the Debtor, and all Cash Collateral generated or received subsequent to the Petition Date. All funds on deposit in the Cash Collateral Account are and shall constitute Secured Lender's Cash Collateral under Section 363 of the Bankruptcy Code and are subject to the terms of this Order; it is further

ORDERED that subject to the provisions and conditions herein, the Debtor is hereby authorized to use Cash Collateral to pay the Expenses set forth on the Budget through September 30, 2017. Absent Secured Lender's written consent to the further use of Cash Collateral, any use thereof must be based upon further order of the Court; it is further

ORDERED that the Debtor's use of Cash Collateral to pay Expenses shall be limited to the lesser of the amount in the Budget for each line item and the actual, ordinary and necessary expenditure for such line item. The Debtor shall be permitted a 10% variance over line items in the Budget. Prior to exceeding 110% of budget for any particular line item, Debtor must obtain advance written approval from Secured Lender by advising counsel for the Secured Lender of the anticipated overage. If the Secured Lender does not give its written approval with 2 business days, then the Debtor shall have the right to request court approval for such line item.

The Debtor shall not, however, be permitted to carry over any excess of budgeted costs in one line item on the Budget to any shortage of budgeted costs on any other line item, or from one period on the Budget to any subsequent period, without Secured Lender's prior written consent; it is further

ORDERED that any consent granted by Secured Lender to the use of Cash Collateral shall not be construed as: (1) consent to an extension of exclusivity pursuant to Section 1121 of the Bankruptcy Code; (2) consent to a surcharge against the Property, the Cash Collateral, or Secured Lender pursuant to Bankruptcy Code Section 506(c) or otherwise; (3) any agreement that Secured Lender's interest in the Property is adequately protected; (4) a waiver of the right to seek relief from the automatic stay; or (5) any waiver as to any such other and further relief as Secured Lender may deem appropriate; it is further

ORDERED that except in strict accordance with the Budget and the provisions of this Order, the Debtor shall not be permitted to spend any Cash Collateral or withdraw any funds on deposit in the Cash Collateral Account for any reasons whatsoever without the written consent of Secured Lender or further order of this Court. Except for compensation and expense reimbursements expressly approved pursuant to this Order, the Debtor shall not make any payments of or from Cash Collateral to or for the benefit of any insider of the Debtor, as that term is defined in Section 101(31) of the Bankruptcy Code. The Debtor shall also not use any Cash Collateral to pay any expenses not described in the Budget, to pay any prepetition debts of the Debtor, or to pay any professional fees or expenses of the Debtor not included in the Budget; it is further

ORDERED that the Debtor shall also be authorized to use the Cash Collateral to make requisite quarterly payments to the U.S. Trustee during the pendency of the case; it is further

ORDERED that the Secured Lender is hereby granted valid, binding, enforceable, and perfected liens (the “Post-petition Liens”) co-extensive with the Secured Lender’s pre-petition liens in all currently owned or hereafter acquired property and assets of the Debtor, of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds and products, including, without limitation, all accounts receivable, general intangibles, inventory, and deposit accounts coextensive with their pre-petition liens. Nothing herein shall grant a lien on, interest in or claim on Chapter 5 causes of action. Nothing herein shall prime the liens of the taxing authorities; it is further

ORDERED that as adequate protection for the diminution in value of the interests of the Secured Lender, the Secured Lender is hereby granted replacement liens and security interests, in accordance with Bankruptcy Code Sections 361, 363, 364(c)(2), 364(e), and 552, co-extensive with its pre-petition liens; it is further

ORDERED that the replacement liens granted to the Secured Lender in this Order are automatically perfected without the need for filing of a UCC-1 financing statement with the Secretary of State’s Office or any other such act of perfection; it is further

ORDERED that during the period governed by this Order, the Debtor shall maintain an accounting, in line item detail corresponding to the line items set forth in the Budget, of all Cash Collateral, and all funds deposited into and expended from the Cash Collateral Account, and shall provide Secured Lender with that accounting no later than 15 days after the end of each period of use. In addition, the Debtor shall provide to Secured Lender such other documents, reports and/or financial information as may be reasonably requested by Secured Lender; it is further

ORDERED that upon Secured Lender's request for access to the Property or the Debtor's books and records relating to the Cash Collateral, the Debtor shall give Secured Lender, its

representatives and consultants, reasonable access to the Debtor's facilities, offices, books and records during normal business hours at a mutually agreeable time no later than three (3) business days' after Secured Lender's request to enable such parties to, among other things, observe the Debtor's compliance with the terms and conditions of this Order, and inspect the Property and the Debtor's books and records; it is further

ORDERED that the Debtor shall maintain insurance on the Property of a kind and in an amount required under the Secured Lender's loan documents and provide proof of such insurance upon request; it is further

ORDERED that the Debtor shall maintain and take all steps necessary to keep the Property in good repair and condition, make all necessary replacements thereof, and operate the Property safely, efficiently, and in compliance with all applicable laws, codes and ordinances. The Debtor shall not commit waste in connection with the Cash Collateral or the Property. The Debtor shall preserve and maintain all licenses, privileges, franchises and certificates related to and/or necessary for the operation of the Property; it is further

ORDERED that notwithstanding anything to the contrary in this Order:

- a) Entry of this Order is without prejudice to any and all rights, remedies and claims that Secured Lender may have against the Debtor or third parties, and does not bar or limit Secured Lender from seeking further or additional relief, including without limitation, seeking additional adequate protection and seeking to terminate or modify the automatic stay;
- b) Secured Lender reserves any and all rights to object to the entry of any order that alters or deviates from the terms and provisions of this Order or for any other reason; and
- c) No act committed or action taken by Secured Lender under this Order shall be used, construed, or deemed to hold Secured Lender to be in control of the Debtor, or the governance, management or operations of the Debtor for any purpose. Nor will Secured Lender be held to be a "responsible person" or "owner or operator" or a person in "control" with respect to the governance, management or operation of the Debtor's business (as such terms, or any similar terms, are used in the Internal

Revenue Code, Comprehensive Environmental Response, Compensation and Liability Act, Bankruptcy Code, each as may be amended from time to time, or any other federal or state law) by virtue of the interests, rights, and remedies granted to or conferred upon Secured Lender under this Order, including, without limitation, such rights and remedies as may be exercisable by Secured Lender in connection with this Order; it is further

ORDERED that unless specifically waived in writing by Secured Lender, the Debtor's right and authority to use Cash Collateral shall immediately terminate upon the earlier of September 30, 2017, or the occurrence of any of the following (each, a "Default"):

- a) Ten (10) days following either Secured Lender's delivery of a notice (either written or via email) of a breach by the Debtor of any obligation under this Order which breach remains uncured or otherwise continues to exist at the end of such ten (10) day notice period;
- b) Conversion of the Debtor's Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code;
- c) The appointment of a trustee pursuant to Section 1104 of the Bankruptcy Code;
- d) The entry of any order modifying, reversing, revoking, staying, rescinding, vacating or amending this Order without the express prior written consent of Secured Lender (and no such consent shall be implied from any action, inaction, course of conduct or acquiescence by Secured Lender); and
- e) The lifting of the automatic stay for any party other than Secured Lender and/or any party foreclosing or otherwise seeking to enforce any lien or other right such other party may have in and to any property of the Debtor's estate upon which Secured Lender holds or asserts a lien or security interest; it is further

ORDERED that subject to all reservation of rights in this Order, the provisions of this Order shall inure to the benefit of the Debtor and Secured Lender and shall be binding upon the Debtor and Secured Lender and their respective successors and assigns, including any trustee, agent, administrator or other fiduciary hereafter appointed as legal representative of the Debtor or with respect to property of the Debtor's estate, whether under Chapter 11 of the Bankruptcy Code or any subsequent Chapter 7 case, and shall also be binding upon all creditors of the Debtor and all other parties in interest; it is further

ORDERED that if any or all of the provisions of this Order are hereafter modified, vacated or stayed, such modification, vacation or stay shall not affect the validity of any obligation, indebtedness or liability incurred by the Debtor to Secured Lender from the Petition Date through the effective date of such modification, vacation or stay, or the validity or enforceability of any security interest, lien or priority authorized or created hereunder; it is further

ORDERED that following entry of this Order, Debtor and any other creditor or party in interest has until September 15, 2017 within which to object to: (i) the validity or amount of the Indebtedness; or (ii) the validity, enforceability or priority of Secured Lender's security interests in and liens on the Debtor's properties and assets described in the Secured Lender's loan documents. If the Debtor or any other creditor or party in interest does not object on or before September 15, 2017, all such matters shall be conclusively established as stated herein, and such objections shall be deemed waived and forever barred; it is further

ORDERED that the entry of this Order shall not prejudice or limit the rights of the Debtor, Secured Lender or any other party in interest to seek additional relief with respect to the use of Cash Collateral, to seek different or additional adequate protection, or request modification or termination of this Order. This Order shall not limit or otherwise alter the rights of the Debtor, Secured Lender or other parties in interest, except to the extent specifically provided for herein. Further, nothing contained herein shall waive or modify any rights and remedies which Secured Lender has or may come to have under the Secured Lender's loan documents, this Order, at law, in equity, or otherwise; it is further

ORDERED that no subsequent stay, modification, termination, failure to extend the terms of, or vacation of this Order shall affect, limit, or modify any claim, right, or lien granted hereunder to Secured Lender, nor shall any such stay, modification, or vacation limit, affect, or modify the

validity, enforceability, or perfection of any security interest, mortgage, lien, or priority granted herein; it is further

ORDERED that the Debtor's authority to use Cash Collateral under this Order terminates at 5:00 p.m. Central Time on September 30, 2017, unless extended by further order of the Court; it is further

ORDERED that the automatic stay under Section 362(a) of the Bankruptcy Code shall be, and it hereby is, modified to the extent necessary to permit the Secured Lender to retrieve, collect and apply payments and proceeds in respect of the Pre-petition Collateral and Post-petition Collateral in accordance with the terms and provisions of this Order. The Debtor shall execute and deliver to the Secured Lender all such agreements, financing statements, instruments and other documents as the Secured Lender may reasonably request to evidence, confirm, validate or perfect the liens granted pursuant hereto. The Debtor shall deliver a copy of its Monthly Operating Report to the Secured Lender's counsel by the 20th day of each month for the prior month; it is further

ORDERED that no later than the last calendar day of each month, beginning August 31, 2017, the Debtor shall remit to the Secured Lender the amount of \$5,000.00, which shall be held by the Secured Lender in escrow for payment of 2017 taxes on the Property; it is further

ORDERED that in addition, the Debtor shall commence making monthly payments to the Secured Lender on or before August 10, 2017, and on the 10th day of each month thereafter until otherwise directed by the Court or by operation of law, in the amount of \$5,547.00 (the "Monthly Payments"); it is further

ORDERED that following entry of this Order, any other creditor or party in interest has fourteen (14) days within which to object to the monthly payments described in the immediately foregoing paragraph. If no objection is timely filed, the Debtor may make the payment as called

for, and if an objection is filed, no payments made be made without notice, a hearing and further order of the Court; it is further

ORDERED that the Monthly Payments shall be made by wire transfer from Debtor's debtor-in-possession account to the Secured Lender pursuant to instructions to be provided to the Debtor by the Secured Lender; it is further

ORDERED that the Monthly Payments satisfy the requirements for adequate protection payments as contained in 11 U.S.C. §362(d)(3); it is further

ORDERED that on or before the fifteenth day of September, 2017, the Debtor shall provide to the Secured Lender's counsel and to the United States Trustee by electronic mail a proposed budget for the two-month period beginning October 1, 2017 (the "Proposed Extended Budget"), and if, on or before September 25, 2017, the Proposed Extended Budget is approved by the Secured Lender for the upcoming two-month period (thereby becoming an "Approved Extended Budget"), the Debtor shall file a Notice of Agreement Authorizing Continued Use of Cash Collateral (with a copy of the Proposed Extended Budget attached), and the Debtor shall be authorized to use Cash Collateral in accordance with the Approved Extended Budget; it is further

ORDERED that this Order shall be effective as of August 1, 2017 notwithstanding the possible application of Fed. R. Bankr. P. 6004(h), 7062, 9014, or otherwise. This Order may not be modified except as may be mutually agreed upon by the Debtor and the Secured Lender in writing or as otherwise ordered by this Court; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or relating to the implementation of this Agreed Final Order.

SIGNED:

Signed on 8/4/2017

 SR
HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE

AGREED AS TO FORM AND SUBSTANCE:

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COUNSEL FOR WELLINGTON STATE BANK

AUGUST - SEPTEMBER 2017 BUDGET	Assumptions	August-17	September-17
Anticipated Total Room Rentals		762	678
Room Revenue		47,172.08	41,200.00
Expenses			
Advertising		660.00	660.00
Bank Charges		37.00	37.00
Breakfast Supplies	\$1.80	1,371.60	1,220.40
Contract Work/Labor		-	-
Credit Cards Discounts	2.0%	1,943.44	816.13
Dues and Subscriptions		-	-
Franchise Comm./Expenses	8.0%	3,773.77	3,264.53
Insurance		1,499.00	1,499.00
Laundry Supplies		450.00	450.00
Licenses and Permits		67.00	67.00
Office Expenses		155.00	35.00
Front Desk Wages		5,580.00	5,580.00
Housekeeping & Laundry Wages	\$ 5.80	4,419.60	3,932.40
Payroll Taxes	9.0%	899.96	856.12
Legal Fees		-	-
Accounting Fees		200.00	150.00
Professional Fees		-	-
Building Repairs		1,500.00	400.00
Equipment Repairs		400.00	150.00
Grounds and Maintenance		167.00	167.00
Room and Guest Supplies		1,800.00	1,800.00
Staff Uniforms		300.00	-
Swimming Pool Expenses		200.00	50.00
Real Estate Tax Escrow		5,000.00	5,000.00
Other Taxes		-	-
Other - Adequate Protection Payments		5,547.00	5,547.00
Training Expenses		-	-
Travel Expenses		352.00	352.00
Entertainment Expenses		-	-
Internet		76.50	76.50
Satellite TV		670.00	670.00
Telephone		305.00	305.00
Electricity		2,116.00	1,950.00
Gas		565.00	565.00
Water, Sewer & Garbage		584.00	584.00
General Manager / Owner Salary		5,000.00	5,000.00
Total Expenses		45,638.87	41,184.08
Net Income		1,533.21	15.92

EXHIBIT "A"